

REMARKS

Claims:

Reconsideration of the rejections is respectfully requested.

The status of the claims is as follows:

Amended:	43, 62
New	75-76
Pending:	43-76

It is believed that a fee for one additional claim which was not previously paid for (33), is due.

The claims have been amended to more clearly define the invention. Support for the amendments is either apparent or is as described below. Support for the amendment to claim 43 at (2ⁱⁱⁱ)(a) can be found, for example, at page 8, lines 25-28. Support for the amendment to R²² can be found, for example, at page 7, lines 13-14. The recitation in claim 62 has been amended to secure consistency with claim 43. Support for claim 75 can be found at, for example, page 10, line 9. Support for claim 76 can be found at, for example, page 3, line 9. No new matter is added.

Claim Rejections - 35 U.S.C. §112, First Paragraph

Claims 43, 46-56, 59-65 and 68-74 stand rejected under 35 U.S.C. §112, first paragraph based on assertion that the claims contain subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors, at the time the application was filed, had possession of the claimed invention. In particular, the Examiner objected to the definition of R^q, R^r, or R^s in claim 62.

Without conceding the correctness of the rejection, Applicants have amended claim 62 so that the disputed recitation is now absent in the amended claim. Specifically, the claim has been amended so that heteroaryl includes thienyl, furanyl, thiazolyl, isothiazolyl, oxazolyl, isoxazolyl, benzothienyl, benzofuryl, benzothiazolyl, benzoxazolyl or methylenedioxophenyl. Support for these recitations can be found at page 8, lines 25-28. Accordingly, reconsideration and withdrawal of the rejection under 35 U.S.C. §112, first paragraph are respectfully requested.

Elections/Restrictions

Due to the previous amendment to claim 43, the Examiner contends that claims 43, 46-56, 59-65 and 68-74 are drawn to an invention that is independent and distinct from the invention originally claimed. In particular, the Examiner posits that the recitations of benzoazolyl and benzodiazolyl in claim 43 would require additional searching which was not previously conducted in the first or subsequent Office Actions.

While not conceding the correctness of the rejection, Applicants have amended claim 43 to remove the disputed recitations of benzoazolyl and benzodiazolyl from the claim, thus removing the asserted basis for the election/restriction requirement. Reconsideration and withdrawal of the requirement is respectfully requested.

Claim Rejections - 35 U.S.C. §112, First Paragraph

Claims 43-51, 55-60, 62-65 and 68-74 stand rejected under 35 U.S.C. §112, first paragraph for allegedly containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors had possession of the claimed invention. In particular, the Examiner asserts, “The definition of R²³ and R²⁴, where the alkyls of R²³ and R²⁴ can be combined to include 1,3-dioxolane and 1,3-dioxane when R²² is other than H is not described in the specification for the genus.”

Without conceding the correctness of the rejection, Applicants have amended claim 43 to precede the recitation of the alkyls of R²³ and R²⁴ being combined to form a 1,3-dioxolane or 1,3-dioxane ring, with the recitation, “where R²² is H.” Accordingly, reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, first paragraph is respectfully requested.

Double Patenting

Claims 43-51, 55-60, 62-65 and 68-74 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9, 11-13, 15-17, 19, 20, and 29-66 of U.S. Patent No. 6,667,336. The Examiner submits that the claims are not identical, but asserts that the claims are not patentably distinct from each other.

Without conceding the correctness of the rejection, Applicant have elected to submit a terminal disclaimer pursuant to 37 CFR 1.321(c). Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

In Conclusion

In light of these amendments and remarks, it is respectfully submitted that the Amendment should be entered, the rejections should be withdrawn, and that the application is in condition for allowance.²

Respectfully submitted,



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² **Fee Deficiency**

If any additional extension is required, please consider this paper a petition for such an extension; Any fee for the extension required for consideration of this paper but not enumerated above or in a transmittal or other associated paper can be charged to Account No. 04-0480.

AND/OR

If any additional fee is required for consideration of this paper, please charge Account No. 04-0480.